

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

PEOPLE OF THE STATE MICHIGAN,

Plaintiff,

vs.

Case No. 2005-4870-FH

JASON LEE SPACCAROTELLI,

Defendant.

_____/

OPINION AND ORDER

Defendant has brought a motion to amend his sentence.

I

Defendant was charged with possession of cocaine, contrary to MCL 333.7403(2)(a)(v), possession of an analogue (xanax), contrary to MCL 333.7403(2)(b)(ii), possession of an analogue (vicodin), contrary to MCL 333.7403(2)(b)(ii), and to creation/delivery of an analogue (vicodin), contrary to MCL 333.7402(2)(e). At the time of his offense, defendant was on parole, and he was incarcerated on a parole detainer pending trial. Defendant waived his preliminary examination and was bound over for trial by the Hon. Norene Redmond, Judge of the 38th District Court. Defendant subsequently pled guilty to creation/delivery of an analogue, and the first three counts against him were dismissed. This Court sentenced defendant to 1-15 years, with no credit for time served.

II

The trial court may correct an invalid sentence on motion by either party, but the court may not modify a valid sentence except as otherwise provided by law. MCR 6.429(A). Whether



a defendant was improperly denied credit for time served in jail before sentencing, as provided in MCL 769.11b, is an issue of law that is reviewed de novo. *People v Givans*, 227 Mich App 113, 124; 575 NW2d 84 (1998).

III

Defendant now requests that this Court amend his sentence. Defendant claims that individuals are generally entitled to a credit for time served pending trial. Defendant argues that he was on parole at the time he committed the instant offense and served 141 days in Macomb County Jail prior to sentencing. He notes that he was unable to post bail, and was returned to jail without a parole violation hearing. He further claims that there was never any determination as to whether he was required to serve any additional time on his prior sentence. Therefore, he argues that he is entitled to a credit for the time he served prior to sentencing.

In response, the prosecution argues that the Court is precluded from crediting jail time for a parolee arrested on a new offense while incarcerated for a parole violation. Rather, the prosecution claims that an individual incarcerated on a parole detainer is only entitled to credit for time served on a parole detainer against the original offense for which he had been paroled.

IV

Generally speaking, “[o]ne who serves time in jail before sentencing for denial of bond or inability to post bond is entitled to receive credit for that time served in jail before sentencing.” *People v Seiders*, 262 Mich App 702, 705; 686 NW2d 821 (2004) (citing MCL 769.11b). However, a defendant is not entitled “to a credit for time served before sentencing if he is incarcerated for an offense other than that for which he is ultimately convicted, or for other unrelated reasons.” *Id.* at 706 (citations omitted). Further, “a defendant is entitled to sentencing

credit under MCL 769.11b only if he has been denied or [is] unable to furnish bond." *People v Meshell*, 265 Mich App 616, 640; 696 NW2d 754 (2005).

Turning to the case at bar, defendant was incarcerated on parole detainer pending sentencing. His detention was unrelated to the offense for which he ultimately pled guilty, and this Court neither set nor denied bond. Therefore, MCL 769.11b is inapplicable to this matter, and the Court is satisfied that defendant was not entitled to a credit for the time he served on his parole detainer prior to sentencing. As such, defendant's motion to amend his sentence is properly denied.

V

Based on the foregoing, it is hereby

ORDERED defendant's motion to amend his sentence is DENIED. This case was previously closed. MCR 2.602(A)(3)

SO ORDERED.

DATED:

Peter J. Maceroni,
Circuit Judge

cc: Steven Fox
Jason Spaccarotelli

PETER J. MACERONI
CIRCUIT JUDGE

JUN 29 2006

A TRUE COPY
CARMELLA SABAUGH, COUNTY CLERK

BY: *[Signature]* Court Clerk